



CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO

CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO ACT, 2017

TO: Jeffrey Spicer, CPA, CGA

AND TO: The Discipline Committee of CPA Ontario

The Professional Conduct Committee of CPA Ontario hereby makes the following allegations of professional misconduct against Jeffrey Spicer, CPA, CGA, a member of CPA Ontario:

1. THAT the said JEFFERY SPICER in or about the period November 2015 through December 2015 failed to conduct himself in a manner which will maintain the good reputation of the profession and its ability to serve the public interest in that he, while engaged to provide tax services and accounting services, manipulated two cheques and misappropriated over \$33,600 from his client "NE Inc.", contrary to Rule 201.1 of the Rules of Professional Conduct and the CPA Code of Professional Conduct (Code).
2. THAT the said JEFFERY SPICER in or about the period February 2016 to July 2018 failed to conduct himself in a manner which will maintain the good reputation of the profession and its ability to serve the public interest in that he, while engaged to provide tax services and accounting services, manipulated five cheques and misappropriated over \$32,400 from his client "XXX833 Ontario Inc.", contrary to Rule 201.1 of the Code.
3. THAT the said JEFFERY SPICER in or about the period of December 2016 to January 2017 failed to conduct himself in a manner which will maintain the good reputation of the profession and its ability to serve the public interest in that he, while engaged to provide tax services and accounting services, manipulated one cheque and misappropriated \$15,000 from his clients "OC Inc." and "CH Inc.", contrary to Rule 201.1 of the Code.
4. THAT the said JEFFERY SPICER in or about the period ~~January 2017~~ October 2016 to April 2018 failed to conduct himself in a manner which will maintain the good reputation of the profession and its ability to serve the public interest in that he, while engaged to provide tax services and accounting services, manipulated five cheques and misappropriated over \$45,000 from his client, "NM" and her corporation, "D Inc.", contrary to Rule 201.1 of the Code. *Amended on consent with leave of the panel, August 10, 2020*

5. THAT the said JEFFERY SPICER in or about the period July 2017 to September 2017 failed to conduct himself in a manner which will maintain the good reputation of the profession and its ability to serve the public interest in that he, while engaged to provide tax services and accounting services, manipulated 12 cheques and misappropriated over \$150,800 from his client "MH Inc.", contrary to Rule 201.1 of the Code.
6. THAT the said JEFFERY SPICER in or about the period of March 2018 failed to conduct himself in a manner which will maintain the good reputation of the profession and its ability to serve the public interest in that he, while engaged to provide tax services and accounting services, manipulated one cheque and misappropriated over \$37,900 from "JVM Pro. Corp.", contrary to Rule 201.1 of the Code.
7. THAT the said JEFFERY SPICER in or about the period March 2018 through April 2018 failed to conduct himself in a manner which will maintain the good reputation of the profession and its ability to serve the public interest in that he, while engaged to provide tax services and accounting services, misappropriated over \$15,900 from his client "RB", contrary to Rule 201.1 of the Code.
8. THAT the said JEFFERY SPICER in or about the period December 2018, within two years of being engaged to provide tax services and accounting services, borrowed from his client "OC Inc.", approximately \$15,000 in circumstances which did not fall within the provisions of Rule 209.1(a) or (b) of the Code, contrary to Rule 209.1 of the Code.
9. THAT the said JEFFERY SPICER in or about the period of January 2019 failed to conduct himself in a manner which will maintain the good reputation of the profession and its ability to serve the public interest in that he, while engaged to provide tax services and accounting services, manipulated one cheque and misappropriated over \$4,500 from his client "TJT Inc.", contrary to Rule 201.1 of the Code.

Dated at Aurora, Ontario, this

16th day of January 2020.



H.G. FAGAN, FCPA, FCA, DEPUTY CHAIR
PROFESSIONAL CONDUCT COMMITTEE

CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO
CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO ACT, 2017

DISCIPLINE COMMITTEE

IN THE MATTER OF: Allegations, as amended, against **JEFFREY SPICER, CPA, CGA**, a member of the Chartered Professional Accountants of Ontario, under **Rule 201.1** and **Rule 209.1** of the CPA Ontario Rules of Professional Conduct and the CPA Code of Professional Conduct ('Code').

TO: Jeffrey Spicer

AND TO: The Professional Conduct Committee

DECISION AND ORDER MADE AUGUST 10, 2020

DECISION

The allegations that Jeffrey Spicer has breached Rule 201.1 and Rule 209.1 of the the CPA Ontario Rules of Professional Conduct and the CPA Code of Professional Conduct ('Code') are established, and he has committed professional misconduct.

ORDER

IT IS ORDERED THAT:

1. Jeffrey Spicer be reprimanded in writing by the Chair of the hearing;
2. Jeffrey Spicer shall pay a fine of \$25,000 to the Chartered Professional Accountants of Ontario ("CPA Ontario") by August 10, 2022;
3. Jeffrey Spicer's membership with CPA Ontario is revoked;
4. Notice of this Decision and Order, disclosing Jeffrey Spicer's name, is to be given in the form and manner determined by the Discipline Committee:
 - a) to all members of CPA Ontario;
 - b) to all provincial bodies;
 - c) to the Public Accountant's Counciland shall be made available to the public;

5. Notice of this Decision and Order disclosing Jeffrey Spicer's name is to be given by publication on the CPA Ontario website and in the Welland Tribune. Jeffrey Spicer shall pay all costs associated with the publication, which shall be in addition to any other costs ordered by the Panel.

AND THAT:

6. Jeffrey Spicer shall pay costs of \$14,000 to CPA Ontario by August 10, 2022.

DATED at Toronto this 10th day of August 2020.

A handwritten signature in black ink, appearing to read 'D. Handley', with a large, stylized initial 'D' and a flourish at the end.

David Handley
Discipline Committee

CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO
THE CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO ACT, 2017

DISCIPLINE COMMITTEE

IN THE MATTER OF: Allegations against **JEFFREY SPICER**, CPA, CGA, a member of the Chartered Professional Accountants of Ontario, under **Rules 201.1 and 209.1** of the Chartered Professional Accountants of Ontario Code of Professional Conduct.

BETWEEN:

**Chartered Professional Accountants of Ontario
Professional Conduct Committee**

-and-

Jeffrey Spicer

APPEARANCES:

For the Professional Conduct Committee: Kelvin Kucey, Counsel

For Mr. Spicer: Self-represented

Heard: August 10, 2020

Decision and Order effective: August 10, 2020

Release of written reasons: September 23, 2020

REASONS FOR DECISION AND ORDER MADE AUGUST 10, 2020

I. OVERVIEW

[1] The Professional Conduct Committee of the Chartered Professional Accountants of Ontario ("PCC") had made Allegations that, during the period between November 2015 and January 2019, Mr. Spicer had failed as a member of the Chartered Professional Accountants of Ontario ("CPA Ontario") to maintain the good reputation of the profession and its ability to serve the public by manipulating cheques belonging to eight clients and misappropriating the clients' funds, and had also borrowed money from one of those clients. This hearing was held to determine whether the Allegations were established and whether the

conduct breached Rules 201.1 and 209.1 of the CPA Ontario Code of Professional Conduct (“Code”) and amounted to professional misconduct.

- [2] Mr. Spicer indicated that he had held a CGA designation for 44 years at the time of the hearing. He received a CPA designation and became a member of CPA Ontario upon amalgamation in 2014. At all material times, he operated an accounting practice as a sole practitioner in Welland.
- [3] On March 26, 2019, the Associate Director of Forensic Accounting at the Royal Bank of Canada (“RBC”) filed a complaint with CPA Ontario regarding Mr. Spicer. This complaint brought the events that gave rise to the Allegations to the attention of the CPA Ontario.
- [4] Mr. Spicer admitted all of the Allegations of professional misconduct made by the PCC. The onus was on the PCC to show on a balance of probabilities that Mr. Spicer’s conduct breached Rules 201.1 and 209.1 of the Code and constituted professional misconduct.

II. PRELIMINARY ISSUES

- [5] The PCC sought the leave of the Panel to amend the timeline set out in Allegation #4. The timeframe of the alleged misconduct was to be changed from starting in January 2017 to starting in October 2016, and continuing to April 2018. Mr. Spicer consented to this amendment. The Panel permitted the Allegation to be amended.
- [6] At the outset of the hearing, Mr. Spicer confirmed that he was waiving his right to counsel and that he had signed an Agreed Statement of Facts admitting that the facts in that document constituted professional misconduct. The chair of the Panel discussed the nature of these admissions, and their effect on the hearing, with Mr. Spicer. Mr. Spicer confirmed that he understood the allegations and the effect of his admissions. The Panel was satisfied that Mr. Spicer had made these admissions aware of their content and effect, and that he had made them voluntarily.

III. ISSUES

- [7] The Panel identified the following issues arising from the Allegation:
 - (i) Did the evidence establish, on a balance of probabilities, the facts on which the Allegations by the PCC were based?
 - (ii) If the facts alleged by the PCC were established on the evidence on a balance of probabilities, did the Allegations constitute professional misconduct?

IV. DECISION

- [8] The Panel found that the evidence established, on a balance of probabilities, the facts set out in the Allegations of professional misconduct.
- [9] The Panel was satisfied that Allegations 1 to 7, inclusive, and Allegation 9 constituted a breach of Rule 201.1, and Allegation 8 constituted a breach of Rule 209.1 and, having breached these Rules, Mr. Spicer had committed professional misconduct.

V. REASONS FOR THE DECISION

Findings regarding Conduct of Mr. Spicer

- [10] The evidence in support of the Allegations was placed before the Panel primarily by way of an Agreed Statement of Facts (Exhibit 1), along with a corresponding Document Brief (Exhibit 2). In addition, the PCC introduced, with the consent of Mr. Spicer, the Investigation Report and Document Brief, dated December 2019, prepared by Karen Ho James, whom the PCC assigned to investigate the matter. However, given the existence of an Agreed Statement of Facts, the Panel placed little weight on the Investigation Report and Document Brief, only referring to it to clarify ambiguities in the Agreed Statement of Facts.
- [11] The facts on which the Panel relied were not in dispute. At the relevant times, and for a number of years beforehand, Mr. Spicer maintained two bank accounts at the branch of the RBC in downtown Welland: one was a business account, and the other was his personal account. He had a long-term relationship and familiarity with the staff at that branch.
- [12] From November 2015 to January 2019, Mr. Spicer deposited 28 client cheques (which are the subject of the Allegations) into one of his two accounts, thereby intermingling those funds with his personal money. He used these accounts to pay for his day to day expenses for at least four years. In making these deposits, he relied on his established familiarity with the staff.
- [13] On November 27, 2015 and December 17, 2015, Mr. Spicer deposited two cheques belonging to his client NE Inc., totalling \$33,673.00, into his business account.
- [14] On February 12, 2016, October 31, 2016, October 10, 2017, February 28, 2018 and July 31, 2018, Mr. Spicer deposited five cheques belonging to his client XXX833 Ontario Inc., totalling \$32,423.41, into his accounts. Four were deposited to Mr. Spicer's business account; one was deposited into his personal account.

- [15] On January 3, 2017, Mr. Spicer deposited a cheque for \$15,000, belonging to his client, OC Inc., which was operated by LS and WS, into his business account.
- [16] On October 20, 2016, January 24, 2017, August 23, 2017, October 26, 2017, and April 16, 2018, Mr. Spicer deposited into his business account four cheques belonging to his client D Inc., and a cheque belonging to one of the principals of the company, NM. The five cheques totalled \$45,062.73.
- [17] On ten dates between July 13, 2017 and September 13, 2017, Mr. Spicer deposited into his accounts 12 cheques belonging to another client MH Inc. and the principal of that company, LM. The cheques totalled \$150,890.19. At least one of the cheques was deposited into Mr. Spicer's personal account.
- [18] On March 12, 2018, Mr. Spicer deposited a cheque in the amount of \$37,911.75, belonging to his client JVM Pro. Corp., into his business account.
- [19] On March 20, 2018, Mr. Spicer deposited a cheque in the amount of \$15,932.99, belonging to his client RB, into his business account.
- [20] On January 9, 2019, Mr. Spicer deposited a cheque in the amount of \$4,500, belonging to his client TJT Inc., into his business account.
- [21] Mr. Spicer was able to deposit these funds into his accounts in one of three ways:
 - (i) He altered or amended the face of seven cheques, totalling \$105,298.16, to show himself as the payee.
 - (ii) Mr. Spicer deposited another 12 cheques, totalling \$112,673, into his business account even though he was not shown as the payee on the face of the cheque. These included cheques that Mr. Spicer's clients provided him to forward to the Canada Revenue Agency ("CRA"), CRA refund cheques payable to clients and vendor rebate cheques payable to his business clients.
 - (iii) Nine of the cheques from MH Ltd. and K Inc., totalling \$117,422, that Mr. Spicer deposited into his business account were made payable to him on the understanding by the client that Mr. Spicer would immediately forward the payment to the CRA as payment for corporate taxes.
- [22] In total, the evidence demonstrated that Mr. Spicer had taken a total of \$335,394 from clients without their authorization.
- [23] Mr. Spicer's clients were not aware of, and did not authorize, his actions. The explanations provided by Mr. Spicer during the investigation were not corroborated by the clients.

- [24] In December 2018, Mr. Spicer approached LS, one of the principals of OC Ltd., and told her that the RBC had frozen his bank accounts. LS gave Mr. Spicer a \$15,000, interest free, open term loan, from OC Ltd. Mr. Spicer indicated that he had repaid this loan in full subsequently.
- [25] Mr. Spicer had provided accounting and tax services to LS and OC Ltd. within 24 months of the date of this loan. As noted above, OC Ltd. was one of the clients whose cheques Mr. Spicer had deposited into his own account. He had altered the cheque to read "CPA, CGA Jeff Spicer", rather than "CRA" (Document Brief to Agreed Statement of Facts, Exhibit 2, page 357).
- [26] On May 9, 2018, RBC was notified by the Bank of Montreal ("BMO") that three cheques from Mr. Spicer's client WRMH Inc., payable to the Receiver General, had been deposited into Mr. Spicer's business account, but they had been returned "intended payee not paid". RBC recalled the cheques, thereby putting the business account into overdraft.
- [27] Subsequent to May 9, 2018, RBC undertook a review of Mr. Spicer's accounts. RBC identified 15 cheques over the period from November 2015 to April 2018 that were either deposited into Mr. Spicer's accounts although they were payable to other payees or appeared altered to specify Mr. Spicer as the payee. Eight clients of Mr. Spicer were involved.
- [28] Subsequent to the RBC investigation, the investigation by CPA Ontario identified 13 additional cheques that were either payable to other payees or appeared altered to identify Mr. Spicer as the payee. The investigation confirmed that the improper cheques were restricted to eight of Mr. Spicer's clients.
- [29] Once the misappropriations were identified, the banks either recalled funds from Mr. Spicer's accounts or the clients demanded repayment. As at December 16, 2019, Mr. Spicer had not repaid \$178,015.
- [30] On May 10, 2018, RBC froze Mr. Spicer's accounts. RBC closed the accounts in late March 2019.
- [31] The Panel was satisfied that the agreed facts supported each of the Allegations made against Mr. Spicer. In particular, the Panel concluded that the evidence demonstrated on a balance of probabilities that Mr. Spicer had manipulated cheques from eight separate clients and misappropriated the funds, totalling over \$335,000, from those clients. The Panel also found that the evidence demonstrated on a balance of probabilities that Mr. Spicer had borrowed funds from his client, OC Ltd.

Finding of Professional Misconduct

- [32] Mr. Spicer admitted that his actions as set out in each of the Allegations constituted professional misconduct. Having considered all of the evidence, and the relevant provisions of the Code, the Panel agreed.
- [33] The evidence demonstrated that Mr. Spicer had knowingly altered cheques to falsely suggest that he was the proper recipient of the funds. Counsel for the PCC drew the Panel's attention to one example, at pages 282-284 of the Document Brief to the Agreed Statement of Facts (Exhibit 2), to demonstrate the nature of these alterations. In that instance, without the knowledge or authorization of the client, Mr. Spicer manually changed the payee from "CRA" to "J Spicer CPA", so he could deposit the funds into his account.
- [34] As noted in paragraph 24 of the Agreed Statement of Facts, Mr. Spicer had made himself singularly responsible for "the security and integrity of his clients' funds", but he failed to protect the interests of eight clients, "to their prejudice and to his personal benefit". The panel was satisfied that Mr. Spicer's actions were dishonest, given that Mr. Spicer altered many of the cheques and used the funds without the authorization of the clients. In the panel's view, such conduct necessarily amounted to conduct that impugned the good reputation of the profession and its ability to serve the public interest. That reputation was founded on the members of the profession being of unimpeachable integrity. Mr. Spicer's conduct undermined not only his own integrity but that of the entire profession.
- [35] It was suggested by counsel for PCC during his presentation that the fact that Mr. Spicer had made restitution did not mean that Mr. Spicer had not engaged in professional misconduct. However, Mr. Spicer did not take the position before the Panel that the fact of restitution somehow obviated his misconduct. To the contrary, he admitted professional misconduct. The Panel found that whatever restitution Mr. Spicer had made was not a consideration in determining professional misconduct. The panel considered this issue only in relation to sanction.
- [36] Mr. Spicer did offer some context, both during the investigation and before the Panel, for how he found himself engaging in the conduct that was the subject of the Allegations. He noted that he accumulated a number of cheques for the CRA that he could not deposit, and he indicated that he had covered some expenses for the clients who were involved in the Allegations, including penalties and interest due to CRA. Mr. Spicer even suggested that some of the clients might owe him money after accounting for funds that may have been credited to them by CRA. However, in the Panel's view, none of this background changed the fact

that Mr. Spicer had modified cheques and deposited them in his own accounts without the authorization of his clients, and thereby obtained the benefit of the clients' funds.

[37] With respect to Allegation #8, Rule 209.1 is clear that members of CPA Ontario cannot borrow from clients unless one of the exceptions applies. The fact of a loan from OC Ltd. having been established, the only issue for the panel to consider was whether either of the exceptions in Rule 209.1(a) or (b) applied. It was clear that the client lending the money was not in the business of lending money; the client operated a small retail business. The funds he borrowed had been loaned to Mr. Spicer by his client who was sympathetic to Mr. Spicer and trying to assist him through the difficulties in which he had found himself. In the panel's view, the client's sympathy did not change or eliminate Mr. Spicer's obligations. The Panel found that no exception applied and concluded that Mr. Spicer's borrowing from a client violated Rule 209.1 of the Code

[38] Considering all of the evidence, and Mr. Spicer's admission, the Panel found that Mr. Spicer had conducted himself in a manner that did not maintain the good reputation of the profession and its ability to serve the public, contrary to Rule 201.1 of the Code. The Panel was satisfied that, having breached both of these Rules, Mr. Spicer had committed professional misconduct.

VI. DECISION AS TO SANCTION

[39] After considering the evidence, the law and the submissions of both parties, the Panel concluded that the appropriate sanction was a written reprimand; a fine of \$25,000 payable within two years; the revocation of Mr. Spicer's membership in CPA Ontario; the publication of the fact of his revocation in the *Welland Tribune*; the publication of the decision to all members of CPA Ontario; and making the decision available to members of the public.

VII. REASONS FOR DECISION AS TO SANCTION

[40] Having considered all of the evidence, the Panel concluded that its assessment of Mr. Spicer's conduct was different from the characterization advanced by the PCC. While Mr. Spicer's actions were clearly inappropriate and involved the misuse of clients' funds without the authorization of the clients, the Panel found that there was no evidence that these actions were motivated by greed or malice. To be clear, the Panel found that Mr. Spicer's conduct was, to borrow his phrase, shady, and was inconsistent with the obligations of a member. But, in the Panel's view, Mr. Spicer's conduct reflected a series of very poor decisions by an

individual who was “out of his depth” in trying to deal with unfamiliar circumstances, namely the handling of client funds intended for CRA, when the funds could not be paid to CRA as they may have once been. Mr. Spicer told the Panel that he had intended to comply with the requirements of the CRA to transition to on-line payments, but he had been unable to make that transition. Mr. Spicer did not operate a trust account, which could have prevented the commingling of funds demonstrated by the evidence. Having made that mistake, he commingled client funds with his own and did not keep track of the respective funds, as he was clearly obliged to do.

- [41] A number of the cheques that were misappropriated by Mr. Spicer were deliberately altered by him so that he could deposit them into his own account. In isolation, a consideration of these cheques supported a conclusion that Mr. Spicer had acted dishonestly for his own enrichment. But, a number of other cheques were payable to him, on the understanding that they were to be paid to CRA. In the Panel’s view, this supported the characterization of Mr. Spicer’s misconduct as less motivated by personal gain and more driven by inept handling of client funds, leading to a personal benefit. This view was also supported by the one instance identified in the Investigation Report (Exhibit 3), at paragraph 56, where Mr. Spicer made an attempt to forward funds to CRA – albeit in an incorrect amount. Although Mr. Spicer clearly benefitted from the use of the misappropriated funds, the evidence did not demonstrate that the opportunity to use the funds was the motivation for his actions.
- [42] The Panel found that there were a number of other mitigating factors to be considered in relation to Mr. Spicer’s misconduct. He did not have a previous discipline history either with CPA Ontario or Certified General Accountants of Ontario (prior to amalgamation). He had fully cooperated with the investigator and CPA Ontario. Although he had vacillated on whether he was going to contest the Allegations, he ultimately signed an Agreed Statement of Facts and admitted professional misconduct, shortening the hearing from the five days scheduled to one. Mr. Spicer also noted that all but two of the clients involved had remained his clients.
- [43] Mr. Spicer made restitution of the monies that he had wrongfully taken. In his submissions, counsel for the PCC contended that there was an “evidentiary desert” concerning the restitution because there was no corroborating evidence from the clients in the form of affidavits confirming that restitution had been made. However, the PCC did not dispute Mr. Spicer’s assertion that he had provided copies of cheques making the restitution. Ultimately, the Panel found that the issue of restitution was determined clearly by paragraph 30 of the Agreed Statement of Facts: Mr. Spicer had indicated that he had repaid all of the money to the clients included in the Allegations, and the PCC was unable to confirm or contest that evidence. In the panel’s view, given the onus of proof on

the PCC, this evidence inevitably supported the conclusion that Mr. Spicer had repaid the full amount of the money to his clients.

- [44] The restitution had occurred against the backdrop of difficult economic times in Welland. While he had continued to work, he said that business was very slow, particularly in the face of the pandemic. Mr. Spicer described his own circumstances as “just treading water”, noting that the events leading to the Allegations and the Allegations themselves had been a real burden on him and his family, both financially and emotionally. Nonetheless, Mr. Spicer recognized that he would need to pay a fine and only asked for time to do that, suggesting two years. The PCC did not oppose any fine being payable over two years. In a unique gesture, Mr. Spicer even offered to make a provision in his will for the payment of a fine and costs, if he did not live through that period.
- [45] Mr. Spicer indicated that he had never wanted to become a CPA: he had been a CGA for 44 years and was content being a CGA. He did not believe he was ready to assume what he considered to be the greater responsibilities of a CPA. Unfortunately, that was not a choice that was available to him, and, even assuming that the standards were different, Mr. Spicer had to comply with the Code.
- [46] Mr. Spicer showed remorse for his actions by entering an Agreed Statement of Facts and admitting professional misconduct. Although Mr. Spicer tried to offer some explanation for his conduct, and suggested he was trying to help his client, he acknowledged that the clients may not have been “on board” with this approach. Mr. Spicer recognized that he had made mistakes and his conduct was unacceptable. The Panel found Mr. Spicer’s expression of remorse genuine and entitled to weight in the Panel’s assessment of his misconduct.
- [47] Despite all of the mitigating factors, the Panel found that the dishonest nature of Mr. Spicer’s conduct required his removal from the profession by the revocation of his membership. In the Panel’s view, actions that indicated a lack of integrity and honesty, even when the dishonest acts may be explained, cannot be reconciled with a person remaining a member of CPA Ontario. To his credit, Mr. Spicer recognized that his conduct required that he lose his CPA designation.
- [48] The Panel concluded that the mitigating factors had to be weighed against the nature of the misconduct and the aggravating circumstances in determining the appropriate amount of the fine to be imposed. The PCC sought a fine of \$50,000 based on a series of precedent cases that counsel reviewed with the panel. He submitted that these cases showed misconduct equally serious to that of Mr. Spicer.

- [49] In each case, the member's membership was revoked and a fine imposed. In the *Bell* decision¹, the Discipline Committee imposed a fine of \$20,000 after the member had taken funds, while acting as a trustee in bankruptcy, by altering cheques and then using the funds for his own living expenses. As noted, the Panel characterized the conduct of Mr. Spicer differently than that of Mr. Bell in light of the lack of long-term personal benefit and the absence of the heightened obligations of a trustee in bankruptcy. In the *McWilliams* decision², the Discipline Committee imposed a fine of \$20,000 after the member stole funds from a number of clients and then created an "elaborate scheme of fraudulent statements" to cover up the thefts. The clients lost significant funds, and the Committee found that the quantum of the fine had to reflect that "[h]is conduct is particularly heinous" (paragraph 31). In the Panel's view, the conduct in the *McWilliams* involved several factors, notably the efforts Mr. McWilliams made to conceal his conduct after the fact, that did not exist in the present case.
- [50] In the *Carr* decision³, the Discipline Committee imposed a fine of \$75,000, which it acknowledged to be "at the higher end of the range of other serious cases of misappropriation" (paragraph 68), after finding that the member had misappropriated approximately \$3 million from a private company for his own benefit and then prepared misleading financial statements to conceal that misconduct. The Committee noted that Mr. Carr expressed no remorse, did not cooperate with the investigation and did not attend the hearing. In the Panel's view, the *Carr* decision was very different than the present case in almost every respect.
- [51] The *Motayne* decision⁴ involved the Discipline Committee imposing a fine of \$40,000 after the member was found to have misappropriated \$800,000 from the non-profit corporation that employed her as Director of Finance. The misappropriations were only discovered after Ms. Motayne was dismissed. She was charged criminally. Again, Ms. Motayne did not express remorse, did not cooperate with CPA Ontario and did not attend the hearing. The Panel found these factors also to be very different from the present case.
- [52] Finally, the Panel considered the *Vos* decision⁵. Mr. Vos was fined \$50,000 – a particularly significant amount given that the case was almost twenty years old – after being found to have misappropriated more than \$8 million by creating false invoices for a company that he operated. The extensive scheme created by Mr. Vos and the magnitude of the misappropriation distinguished Mr. Vos' case from the present case in the view of the Panel. While the Panel did not accept that the

1 *Re Bell*, (ICAO Discipline Committee, March 26, 2009)

2 *Re McWilliams*, 2008 LNICAO 3 (Discipline Committee)

3 *Re Carr* (CPAO Discipline Committee, August 13, 2019)

4 *Re Motayne* (CPAO Discipline Committee, April 29, 2019)

5 *Re Vos* (ICAO Discipline Committee, May 1, 2003)

quantum of the fine should be determined solely by the amount that had been taken or otherwise misused for his own purposes by the member, the quantum involved in the Vos case was a unique order of magnitude.

- [53] The Panel's assessment of the evidence did not excuse the serious misconduct of Mr. Spicer, but it did impact how the Panel compared his misconduct to the misconduct set out in earlier decisions of the Discipline Committee. After reviewing the cases presented by the PCC, the Panel concluded that none of them were sufficiently analogous to the facts of the present case to be of assistance. Each of the cases involved one or more distinguishing factors: deliberate personal gain; very large sums of money; or, a lack of cooperation with the regulatory process. The Panel had to consider the matter from first principles in relation to the quantum of the fine.
- [54] The Panel accepted that there were aggravating factors in this case. Mr. Spicer's clients had relied on him completely as a trusted professional in a small town. He had violated that trust to the prejudice of the clients, whose funds he had taken. Given that this was a situation in which many members of CPA Ontario practised, there was a clear need for a penalty that had clear deterrent value and reassured the public who rely on members in small practices. The misconduct involved the deliberate, and unauthorized, alteration of client cheques, to permit Mr. Spicer to place those funds in his general account. Mr. Spicer's misconduct had also continued for a significant period, specifically four years, with 28 separate instances of misconduct. On each of those occasions, Mr. Spicer had the opportunity to make a different decision, but he did not do so. The misconduct continued until two banks discovered what Mr. Spicer was doing.
- [55] The PCC urged the Panel to give no weight to the fact, as found by the Panel, that Mr. Spicer had made restitution to all of the clients because he had only done so after his misconduct was discovered. In the Panel's view, it would be an error in principle to not give a member credit for making restitution, even if it was only made after the fact. The public interest benefits from members making restitution when they have wrongfully taken funds from a client or others because the victims of the misconduct are made whole without having to pursue legal processes to recover their losses. This is a positive outcome, to which the Discipline Committee ought to give some weight so as to encourage others to take the same steps. The Panel noted that Mr. Spicer had made restitution even though he questioned whether there were amounts that the clients may have owed him. This reflected the validity of Mr. Spicer's representation that he did not make restitution to "correct" his misconduct but for his clients – and himself. This type of restitution needs to be factored into the Panel's consideration of sanction, at least with respect to the quantum of the fine.

- [56] The Panel also found that the revocation of Mr. Spicer's membership was of primary importance as a deterrent to other members considering similar conduct. A fine, of any amount, underscored the deterrent value of the revocation. In the Panel's view, a lesser fine did not detract from the deterrent value of the revocation. The quantum of the fine could acknowledge the mitigating circumstances, however.
- [57] Publication of the sanction in the ordinary course was required in order that the deterrent message could be conveyed to other members and the public. Without publication, the deterrent value of the Panel's decision would be frustrated.
- [58] With respect to publication of the fact of revocation of Mr. Spicer's membership in a local newspaper, the Panel considered PCC's request for publication in both the *Welland Tribune* and the *St. Catharines Standard*. The basis for that request was that one of Mr. Spicer's clients did business in St. Catharines. However, Mr. Spicer's uncontradicted evidence was that his clients predominantly resided or did business in Welland, a distinct community from St. Catharines. In those circumstances, the Panel concluded that publication in the *St. Catharines Standard* was unnecessary. The purpose of publication of a member's revocation in a local newspaper was to ensure that the public he had served was aware that he was no longer a member of CPA Ontario. That purpose was met with the more limited publication.

VIII. COSTS

- [59] The PCC asked the Panel to award two thirds of the costs incurred by the PCC in the prosecution of this matter, as reflected in the Costs Outline filed as Exhibit 5. The total costs set out in the Costs Outline were \$20,866.39. Two thirds of this sum amounted to \$14,000 in round figures. Although the Panel considered Mr. Spicer's description of the difficulties his practice faced, the Panel accepted his concession that he expected he would be able to pay the amount of costs sought by the PCC if he had sufficient time to pay. The quantum of the costs was also due, in part, to Mr. Spicer's response to these proceedings in that they could have been reduced if Mr. Spicer had decided to admit the Allegations sooner.

[60] The Panel decided that an order for costs in the amount of \$14,000, inclusive of HST, was reasonable in all of the circumstances. The Panel ordered that Mr. Spicer pay costs in the amount of \$14,000 within two years of the date on which the order was made.

Dated at Toronto this 23rd day of September, 2020

A handwritten signature in black ink, appearing to read 'D. Handley', with a stylized flourish at the end.

David Handley
Discipline Committee – Public Representative

Members of the Panel

Catherine Kenwell (Public Representative)

George Ireland, CPA, CA

Jane Rivers, CPA, CGA

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